

## Article 25.

### Endangered and Threatened Wildlife and Wildlife Species of Special Concern.

#### **§ 113-331. Definitions.**

All of the definitions contained in Article 12 of this Chapter 113 shall apply in this Article except to the extent that they may be herein modified for the purposes of this Article 25. As used in this Article, unless the context requires otherwise:

- (1) "Conserve" and "conservation" mean the use and application of all methods, procedures and biological information for the purpose of bringing populations of native and once-native species of wildlife in balance with the optimum carrying capacity of their habitat, and maintaining such balance. These methods and procedures include all activities associated with scientific resource management such as research; census; law enforcement; habitat protection, acquisition, and enhancement; and restoration of species to unoccupied parts of historic range. With respect to endangered and threatened species, the terms mean the use of methods and procedures to bring the species to the point at which the measures provided are no longer necessary.
- (2) "Endangered species" means any native or once-native species of wild animal whose continued existence as a viable component of the State's fauna is determined by the Wildlife Resources Commission to be in jeopardy or any species of wild animal determined to be an "endangered species" pursuant to the Endangered Species Act.
- (3) "Endangered Species Act" means the Endangered Species Act of 1973, Public Law 93-205 (87 Stat. 884), as it may be subsequently amended.
- (4) "Advisory Committee" means the North Carolina Nongame Wildlife Advisory Committee which is the advisory body of knowledgeable and representative citizens established by resolution of the Wildlife Resources Commission and charged to consider matters relating to nongame wildlife conservation and to advise the Commission in such matters.
- (5) "Protected animal" means a species of wild animal designated by the Wildlife Resources Commission as endangered, threatened, or of special concern.
- (6) "Protected animal list" means any one of the lists of North Carolina animal species that are endangered, threatened, or of special concern.
- (7) "Scientific council" means the group of scientists identified and assembled by the Advisory Committee to review the scientific evidence and to evaluate the status of wildlife species that are candidates for inclusion on a protected animal list.
- (8) "Special concern species" means any species of wild animal native or once-native to North Carolina which is determined by the Wildlife Resources Commission to require monitoring but which may be taken under regulations adopted under the provisions of this Article.
- (9) "Threatened species" means any native or once-native species of wild animal which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range, or one that is designated as a threatened species pursuant to the Endangered Species Act.
- (10) "Wild animal" means any native or once-native nongame amphibian, bird, crustacean, fish, mammal, mollusk or reptile not otherwise legally classified by

statute or regulation such as game and fur bearing animals, except those inhabiting and depending upon coastal fishing waters, marine and estuarine resources, marine mammals found in coastal fishing waters, sea turtles found in coastal fishing waters, and those declared to be pests under the Structural Pest Control Act of North Carolina of 1955 or the North Carolina Pesticide Law of 1971. Nothing in this definition is intended to abrogate G.S. 113-132(a) or (c), confer jurisdiction upon the Wildlife Resources Commission as to any subject exclusively regulated by any other agency, or to authorize the Wildlife Resources Commission by its regulations to supersede any valid provision of law or regulation administered by any other agency. (1987, c. 382, s. 1.)

**§ 113-332. Declaration of policy.**

The General Assembly finds that the recreation and aesthetic needs of the people, the interests of science, the quality of the environment, and the best interests of the State require that endangered and threatened species of wild animals and wild animals of special concern be protected and conserved, that their numbers should be enhanced and that conservation techniques be developed for them; however, nothing in this Article shall be construed to limit the rights of a landholder in the management of his lands for agriculture, forestry, development or any other lawful purpose without his consent. The North Carolina Zoological Park is not subject to the provisions of this Article. (1987, c. 382, s. 1.)

**§ 113-333. Powers and duties of the Commission.**

(a) In the administration of this Article, the Wildlife Resources Commission shall have the following powers and duties:

- (1) To adopt and publish an endangered species list, a threatened species list, and a list of species of special concern, as provided for in G.S. 113-334, identifying each entry by its scientific and common name.
- (2) To reconsider and revise the lists from time to time in response to public proposals or as the Commission deems necessary.
- (3) To coordinate development and implementation of conservation programs and plans for endangered and threatened species of wild animals and for species of special concern.
- (4) To adopt and implement conservation programs for endangered, threatened, and special concern species and to limit, regulate, or prevent the taking, collection, or sale of protected animals.
- (5) To conduct investigations to determine whether a wild animal should be on a protected animal list and to determine the requirements for conservation of protected wild animal species.
- (6) To adopt and implement rules to limit, regulate, or prohibit the taking, possession, collection, transportation, purchase or sale of those species of wild animals in the classes Amphibia and Reptilia that do not meet the criteria for listing pursuant to G.S. 113-334 if the Commission determines that the species requires conservation measures in order to prevent the addition of the species to the protected animal lists pursuant to G.S. 113-334. This subdivision does not authorize the Commission to prohibit the taking of any species of the classes

Amphibia and Reptilia solely to protect persons, property, or habitat; to prohibit possession by any person of four or fewer individual reptiles; or to prohibit possession by any person of 24 or fewer individual amphibians.

(b) Using the procedures set out in Article 2A of Chapter 150B of the General Statutes, the Wildlife Resources Commission shall develop a conservation plan for the recovery of protected wild animal species. In developing a conservation plan for a protected wild animal species, the Wildlife Resources Commission shall consider the range of conservation, protection, and management measures that may be applied to benefit the species and its habitat. The conservation plan shall include a comprehensive analysis of all factors that have been identified as causing the decline of the protected wild animal species and all measures that could be taken to restore the species. The analysis shall consider the costs of measures to protect and restore the species and the impact of those measures on the local economy, units of local government, and the use and development of private property. The analysis shall consider reasonably available options for minimizing the costs and adverse economic impacts of measures to protect and restore the species.

(c) In implementing a conservation plan under this Article, the Wildlife Resources Commission shall not adopt any rule that restricts the use or development of private property. If a conservation plan identifies a conservation, protection, or restoration measure the implementation of which is beyond the scope of the authority of the Wildlife Resources Commission, the Commission may petition the General Assembly, any agency that has regulatory authority to implement the measure, a unit of local government, or any other public or private entity and request the assistance of that agency or entity in implementing the measure.

(d) The Commission is authorized to develop a bat eviction and exclusion curriculum that may be taught by trade associations or wildlife conservation organizations for certification. The curriculum may incorporate the training that is provided as part of Wildlife Damage Control Agent certification in best management practices for removing and evicting bats from structures and in preventing bats from reentering structures. (1987, c. 382, s. 1; 1995, c. 392, s. 1; 2003-100, s. 1; 2009-219, s. 1.)

#### **§ 113-334. Criteria and procedures for placing animals on protected animal lists.**

(a) All native or resident wild animals which are on the federal lists of endangered or threatened species pursuant to the Endangered Species Act have the same status on the North Carolina protected animals lists.

(b) The Advisory Committee, after considering a report on the status of a candidate species from the Scientific Council, may by resolution propose to the Wildlife Resources Commission that a species of wild animal be added to or removed from a protected animal list.

(c) If the Commission, with the advice of the Advisory Committee, finds there is probably merit in the proposal, it shall examine relevant scientific and economic data and factual information necessary to determine:

- (1) Whether any other state or federal agency or private entity is taking steps to protect the wild animal which is the subject of the proposal;
- (2) Whether there is present or threatened destruction, modification, or curtailment of its habitat;
- (3) If there is over-utilization for commercial, recreational, scientific, or educational purposes;
- (4) Whether there is critical population depletion from disease, predation, or other mortality factors;

- (5) Whether alternative regulatory mechanisms exist; and
- (6) The existence of other man-made factors affecting continued viability of the animal in North Carolina.

(d) The Commission, with the advice of the Advisory Committee, shall tentatively determine whether any regulatory action is warranted with regard to the proposal and, if so, the specific regulatory action to be proposed by it. Notice of its proposed rulemaking shall be published in the North Carolina Register and the subsequent proceedings shall conform with the Administrative Procedure Act. (1987, c. 382, s. 1.)

#### **§ 113-335. North Carolina Nongame Wildlife Advisory Committee.**

The North Carolina Nongame Wildlife Advisory Committee is created subject to constitution, organization, and function as determined appropriate and advisable by resolution of the Wildlife Resources Commission. The Advisory Committee is to be comprised of knowledgeable and representative citizens of North Carolina whose responsibility shall be to advise the Commission on matters related to conservation of nongame wildlife including creation of protected animal lists and development of conservation programs for endangered, threatened, and special concern species.

Members of the Advisory Committee shall receive necessary travel and subsistence expenses while on official business of the Committee in accordance with G.S. 138-5 and G.S. 138-6, to be paid from the Nongame Account of the Wildlife Resources Fund. (1987, c. 382; 1989 (Reg. Sess., 1990), c. 1066, s. 48.)

#### **§ 113-336. Powers and duties of the Advisory Committee.**

The Advisory Committee shall have the following powers and duties:

- (1) To gather and provide information and data and advise the Wildlife Resources Commission with respect to all aspects of the biology and ecology of endangered, threatened, and special concern species;
- (2) To investigate and make recommendations to the Commission as to the status of endangered, threatened, and special concern species;
- (3) To identify and assemble experts from the disciplines of ornithology, mammalogy, herpetology, ichthyology, taxonomy, ecology and other fields as necessary to serve as the Scientific Council and to charge the Scientific Council to review the scientific evidence, to evaluate the status of candidate species, and to report back their findings with recommendations;
- (4) To develop and present to the Commission management and conservation practices for preserving endangered, threatened, and special concern species;
- (5) To recommend critical habitat areas for protection or acquisition;
- (6) To advise the Commission on matters submitted to it by the Commission which involve technical zoological questions or the development of pertinent regulations, and to make any recommendations as deemed by the Advisory Committee to be worthy of the Commission's attention. (1987, c. 382, s. 1.)

#### **§ 113-337. Unlawful acts; penalties.**

- (a) It is unlawful:

- (1) To take, possess, transport, sell, barter, trade, exchange, export, or offer for sale, barter, trade, exchange or export, or give away for any purpose including advertising or other promotional purpose any animal on a protected wild animal list, except as authorized according to the regulations of the Commission, including those promulgated pursuant to G.S. 113-333(1);
  - (2) To perform any act specifically prohibited by the regulations of the Commission promulgated pursuant to its authority under G.S. 113-333.
- (b) Each person convicted of violating the provisions of this Article is guilty of a Class 1 misdemeanor. (1987, c. 382, s. 1; 1999-408, s. 10.)

**§§ 113-338 through 113-350:** Reserved for future codification purposes.